

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

PAMELA A. CURTIS)	
Claimant)	
)	
VS.)	
)	
U.S.D. #473)	
Respondent)	Docket No. 1,023,101
)	
AND)	
)	
NATIONWIDE MUTUAL INSURANCE CO.)	
Insurance Carrier)	

PAMELA A. CURTIS)	
Claimant)	
)	
VS.)	
)	
U.S.D. #305)	
Respondent)	Docket No. 1,023,102
)	
AND)	
)	
COMMERCE & INDUSTRY INS. CO.)	
Insurance Carrier)	

ORDER

U.S.D. #305 and Commerce & Industry Insurance Company request review of the October 25, 2005 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

Two claims were consolidated for preliminary hearing. In Docket No. 1,023,101 the claimant suffered injuries including to her right elbow after a fall from a ladder on

February 15, 2005, while performing her custodial duties for U.S.D. #473. In Docket No. 1,023,102 claimant alleged injury from a paper cut on her right ring finger on or about February 28, 2005, while performing her job duties as a paraprofessional for U.S.D. #305. The claimant developed an infection in her right elbow that ultimately required three surgeries. The primary issue was whether the infection that lead to the elbow surgeries was the natural and probable consequence of the injury to the elbow in the fall from the ladder or whether the intervening paper cut was the cause of the elbow infection.

The Administrative Law Judge (ALJ) found the claimant's elbow infection was not the result of her fall from the ladder while working for U.S.D. #473. Instead, the ALJ ordered U.S.D.#305 to provide claimant temporary total disability compensation and medical treatment.

The respondent, U.S.D. #305, requests review of whether the ALJ erred in finding the claimant's right arm injury arose out of and in the course of employment with U.S.D. #305. Respondent argues the ALJ failed to make a specific finding that claimant suffered accidental injury arising out of and in the course of her employment with U.S.D. #305. Respondent further argues claimant began to develop swelling in her right elbow before the alleged paper cut and consequently it was the injury to the elbow in the fall that caused the infection. In its application for review the respondent listed as issues whether the ALJ erred in the implicit finding regarding notice and written claim. These issues were not mentioned in respondent's brief to the Board.

Claimant requests review of whether the ALJ can defer payment of medical expenses when the claim was found compensable and whether the claimant's upper extremity injury was the result of her accident at U.S.D. #473. Claimant argues the ALJ's Order should be reversed in that the claimant's upper extremity injury was causally related to the fall from the ladder at U.S.D. #473. Claimant further argues the ALJ should have ordered the medical expenses to be paid.

U.S. D. #473 argues the claimant's treatment was the direct and natural result of the intervening accidental paper cut she suffered working for U.S.D. #305. Consequently, U.S.D. #473 argues the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant was employed as a custodian and cafeteria worker for U.S.D. #473. The claimant was also an on-call part-time paraprofessional (para) for U.S.D. #305. Claimant would perform her intermittent work as a para for U.S.D. #305 for a few hours in the morning and then perform her cafeteria and custodial duties for U.S.D. #473. The para

duties were in connection with a special education program provided by U.S.D. #305 for students of U.S.D. #473. As a result claimant worked at the same location in Chapman, Kansas, performing her job duties for both school districts.

On February 15, 2005, the claimant was cleaning outside windows on a ladder when the ladder gave out and she fell bruising/scraping her elbow. Pat Betts was cleaning the windows on the inside and witnessed the claimant's fall as well as the scrapes on her elbow. The claimant washed her elbow with soap and water to remove the blood and dirt. The claimant sought medical treatment on February 18, 2005. X-rays were taken of claimant's left rib and shoulder. She was provided medication. Claimant did not request additional medical treatment.

Claimant then suffered a paper cut to her right ring finger on February 28, 2005, while performing her para duties for a teacher, Ms. McConnell. Claimant told Ms. McConnell she had suffered a paper cut and she went to the school secretary to get a Band-aid for her finger.

There is conflicting testimony regarding when claimant's right elbow became swollen and red. Two co-workers in the cafeteria testified they observed claimant's right elbow being swollen and red before the paper cut incident on February 28, 2005. Conversely, the school secretary, Loretta Fisher, who provided claimant a Band-aid for the paper cut, did not observe any swelling, redness or bruising of claimant's right arm at that time. A claims representative also took claimant's statement on March 1, 2005, regarding the fall from the ladder accident and noted during that conversation the claimant made no complaints that her arm was red or swollen.

Ms. Fisher further noted she did notice redness and swelling of claimant's right elbow on March 3 and 4, 2005. When Ms. Fisher visited the claimant in the hospital she observed red streaks coming from the cut on claimant's right finger.

Claimant testified that her arm was swollen and she had scheduled an appointment on March 4, 2005, with Dr. Coup. An x-ray was taken on the right arm and claimant was advised to take an antibiotic and Ibuprofen. The claimant next sought treatment on March 6, 2005, at Geary County Community Hospital's emergency room due to the swelling and pain in her forearm. She was admitted the same day and treated with IV antibiotics. After claimant was dismissed from the hospital, she was then taken to Mercy Hospital. The claimant had three separate surgeries performed on March 12th, 15th & 17th to her right arm. Each surgery was performed through the same incision. She was released from the hospital on March 21, 2005. Claimant testified she did not have any problems with her right arm before the fall on February 15, 2005. She further testified she did not have any problems with her right ring finger because the paper cut had already healed before she was hospitalized for the arm problems.

In response to a letter from counsel for respondent U.S.D. #473 Dr. Charles S. Bollman opined in a letter dated July 5, 2005, that the cause of claimant's hospitalization and subsequent surgery was the paper cut. The doctor noted in his letter:

Thank you for your letter and all the records concerning this patients [claimant] injuries. I clearly remember the case and remember going over the details of this injury with her several times on different days. She fell from the ladder in mid February, landing on her right arm. I asked her if there was any break in the skin and she said no. She did remember a paper cut to her right ring finger which occurred on February 28, 2005. She then stated that she noted her entire right arm was warm and pink on March 3, 2005. It was my opinion then and now, that the cause of her arm cellulitis was the paper cut. This cut allowed bacteria to enter the lymphatics of her right arm which set up her subsequent hospitalizaation [sic] and surgery.¹

Likewise, Dr. Gregg Coup, in a letter dated June 27, 2005, opined that it was unlikely that claimant's infection would have occurred absent the paper cut that she received to her right upper extremity.²

Dr. Daniel T. Hinkin, in a letter dated June 19, 2005, made the following observations:

Infections in the olecranon bursa can occur from a number of different etiologies. Direct penetrating trauma to the area can introduce bacteria which can multiply and cause a clinical infection. Superficial abrasions to the skin have likewise been noted to spread to the olecranon bursa and subsequently cause a clinical infection several days or even weeks later. If an olecranon bursa is injured such as with a contusion, the tissues will swell. This changes the metabolic staus of the tissues and makes them somewhat more prone to infection, particularly if the tissues are contested and the tissue oxygenation is effected. In such a situation, the injured tissues can serve as a site of bacterial deposition from remote sites. This deposition could occur from a skin break more distal in the limb such as a paper cut or could occur with seeding from another body site such as the throat or the lung. Mrs. Curtis does not give the history of an upper respiratory infection prior to her right elbow infection; hence, the most reasonable etiologies would be either a skin break at the time of her fall from the ladder and subsequent incubation of bacteria causing an infection or tissue damage with subsequent seeding from a more distal site. I am unable to state with any certainty which of these etiologies was foremost in Mrs. Curtis's case.³

¹ P.H. Trans., Resp. Ex. 9

² Ibid.

³ Ibid.

The doctor then responded to a letter from claimant's counsel and agreed that if claimant's arm was swollen before the paper cut then the fall from the ladder was the probable cause for her arm infection and hospitalization.

Then in a letter dated August 16, 2005, Dr. Hinkin stated:

I have the impression that the statements of the co-worker documenting the time that she saw Mrs. Curtis' elbow painful and swollen may not be accurate. If that is the case, and I have no way of confirming or refuting her statements, I would conclude that the paper cut likely contributed to the subsequent infection in the forearm and arm, and the previous fall may have predisposed Mrs. Curtis to developing an infection. In that situation I would have to agree with Dr. Charles Bollman in stating that the infection likely would not have occurred absent the paper cut.⁴

Every direct and natural consequence that flows from a compensable injury, including a new and distinct injury, is also compensable under the Workers Compensation Act. In *Jackson*,⁵ the Court held:

When a primary injury under the Workmen's Compensation Act is shown to have arisen out of the course of employment every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury. (Syllabus 1).

But the *Jackson* rule does not apply to new and separate accidental injuries. In *Stockman*,⁶ the Court attempted to clarify the rule:

The rule in *Jackson* is limited to the results of one accidental injury. The rule was not intended to apply to a new and separate accidental injury such as occurred in the instant case. The rule in *Jackson* would apply to a situation where a claimant's disability gradually increased from a primary accidental injury, but not when the increased disability resulted from a new and separate accident.

Under the facts of this case the claimant has established that she suffered two separate and distinct accidents. On February 15, 2005, she suffered injuries in a fall from a ladder. On or about February 28, 2005, she suffered a paper cut to her finger. The controlling issue is whether the infection in her elbow that lead to her hospitalization was caused by the fall from the ladder or the paper cut.

⁴ P.H. Trans., Cl. Ex. 1.

⁵ *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

⁶ *Stockman v. Goodyear Tire & Rubber Co.*, 211 Kan. 260, 263, 505 P.2d 697 (1973).

The ALJ determined the infection was the result of the paper cut. The facts in this case present a close question but based upon the evidence compiled to date, the Board agrees and affirms. Both Drs. Coup and Bollman concluded the paper cut was the cause of the infection that resulted in claimant's hospitalization. Although Dr. Hinkin, equivocated, his final observation was that he would adopt Dr. Bollman's opinion that the infection would not have occurred but for the paper cut.

The Board is mindful that there was evidence that claimant's arm was red and swollen before the paper cut, which would then change Dr. Hinkin's conclusion. But the primary witness regarding the condition of claimant's arm before the paper cut was inconsistent when asked the date she had observed claimant's arm. And there was contrary evidence that claimant's arm was swollen before the paper cut. Finally, two doctors unequivocally concluded the paper cut was the cause of claimant's arm infection and subsequent hospitalization.

Respondent U.S.D. #305, in its application for hearing raised the issues of timely notice and written claim. Claimant's uncontradicted testimony was that on the same day she suffered the paper cut, she told the teacher she was working for what had occurred. Claimant has met her burden of proof that she provided timely notice and her application for hearing suffices for timely written claim.

Claimant argues the ALJ should have ordered certain medical expenses be paid. This is an appeal from a preliminary hearing. The Board has jurisdiction to review decisions from a preliminary hearing in those cases where one of the parties has alleged the ALJ exceeded his or her jurisdiction.⁷ In addition, K.S.A. 44-534a(a)(2) limits the jurisdiction of the Board to the specific jurisdictional issues identified. A contention that the ALJ has erred in denying payment of medical compensation is not an argument the Board has jurisdiction to consider. K.S.A. 44-534a grants authority to an ALJ to decide issues concerning the furnishing of medical treatment, the payment of medical compensation and the payment of temporary total disability compensation.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.⁸

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge Bryce D. Benedict dated October 25, 2005, is affirmed.

IT IS SO ORDERED.

⁷ K.S.A. 2004 Supp. 44-551(b)(2)(A).

⁸ K.S.A. 44-534a(a)(2).

Dated this 30th day of December 2005.

BOARD MEMBER

c: John J. Bryan, Attorney for Claimant
William G. Belden, Attorney for U.S.D. #305 & Commerce & Industry Ins. Co.
John F. Carpinelli, Attorney for U.S.D. #473 & Nationwide Mutual Ins. Co.
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director